

REMARKS

This is in response to the Office Action mailed May 18, 2007 regarding the subject application.

The applicant's attorney wishes to express his appreciation for the telephonic interview granted by the Examiner on August 8, 2007 regarding the subject application. The Examiner's remarks were helpful and informative and were taken into consideration by the applicant's attorney.

By the above action, claims 151-154 and 159 are finally rejected under 35 U.S.C. 102(b) as being anticipated by US 2002154305 (Goerl). Claims 106-116 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goerl in view of newly cited reference GB 000882881 (Horner) (newly cited). Claims 117-149 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goerl in view of Horner and DE 3339848. Claims 156-158 and 160 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goerl in view of FR 2446097.

In response, the applicants have amended the claims and prepared an Affidavit under 35 CFR 1.132 to provide evidence of secondary considerations for the purpose of traversing the Section 103 rejections.

In respect to the Section 103 rejections on the basis of combining the features of the Goerl and Horner references, the Examiner has said that "In response to applicants argument based upon the age of references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references".

The Examiner went on to describe the types of objective evidence that is required to be submitted in support of secondary considerations with respect to the issue of obviousness.

In response, the applicants have prepared an Affidavit under 35 CFR 1.132 and are submitting it herewith. In this regard, the applicants reiterate their contention that it

would not be obvious to combine the features of the Goerl reference with those of the Horner reference and, even if they were combined, they would not result in the invention as claimed by the applicants. Regarding the obviousness of the combination, the Goerl et al. reference has been a matter of public knowledge since 1939, and the Horner reference has been a matter of public knowledge since 1961. Clearly, nobody skilled in the art has seen fit to combine the features of the two to obtain the applicants invention. By the applicant's submission of its Affidavit under 35 CFR 1.132, an effort has been made to show evidence that 1) the industry recognized the significance and breakthrough nature of the applicant's invention, 2) the product met with over whelming success in the marketplace and allowed the owner to quickly overcome its competitors in market share and 3) after having been shown the way, the competition commenced to copy the applicants in its design features. Thus, the applicants believe that these secondary considerations are very supportive of the position that it would have not been obvious to a person having ordinary skill in the art to modify the Goerl reference to include a single thermally conductive member along the entire extent of a peripheral edge of the external bottom side in the manner as set forth in applicant's claims, in view of the teaching of Horner, as suggested by the Examiner. A reconsideration of the Examiner's rejections on the basis of 37 CFR 103 is respectfully requested in view of the applicant's Affidavit under 35 CFR 1.132 submitted herewith.

In respect to the Goerl reference as applied to claims 151-154 and 159, the Examiner has indicated that the applicant's argument "is however not commensurate with the scope of applicant's claimed invention, nor is it commensurate with the applicant's own disclosure. In this regard, the elements in US 002154305 (Goerl) do indeed meet the limitations of the claimed invention, since it is noted that applicant's "top housing" (e.g. 1152,158) are associated with the external bottom "side" of the vessel rather than the bottom wall as suggested by applicant".

The applicants appreciate the Examiners pointing out this inconsistency and have amended claim 151 to be consistent with the applicant's disclosure. The applicants had made the same remarks regarding claim 106 and have therefore amended that claim in the same manner.

The applicants recognize that, pursuant to 37 CFR 1.116, if amendments touching the merits of the application are presented after Final Rejection, it may be admitted upon the showing of good and sufficient reason why they are necessary and were not earlier presented. The reason is that the applicants were not aware of the inconsistency until it was pointed out by the Examiner in the latest Office Action.

The applicants also recognize that Affidavits submitted under 37 CFR 1.132 must be submitted on a timely basis and are preferably submitted prior to final rejection. However, they may be admitted after final rejection upon a showing of good and sufficient reasons why the Affidavit was not earlier presented. In this regard, the applicants again were not aware of the need for such an Affidavit until it was suggested by the Examiner in the latest Office Action.

For the reasons discussed hereinabove, the applicants believe that the claims, as amended, are patentably distinctive over the cited references. A reconsideration of the Examiner's rejections and a passing of the case to issue is therefore respectfully requested.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0289, under Order No. 1323_001RCE from which the undersigned is authorized to draw.

Dated: August 17, 2007

Respectfully submitted,

By


Dana F. Bigelow

Registration No.: 26,441

MARJAMA MULDOON BLASIAK &

SULLIVAN LLP

250 South Clinton Street

Suite 300

Syracuse, New York 13202

(315) 425-9000

Customer No.: 20874